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No. 00-191

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

FEDERAL ELECTION COMMISSION
Petitioner,

v.

COLORADO REPUBLICAN FEDERAL CAMPAIGN COMMITTEE,
Respondent.

On Writ of Certiorari to the
United State Court of Appeals
for the Tenth Circuit

BRIEF OF AMICUS CURIAE NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE

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INTEREST OF AMICUS CURIAE

Amicus Curiae National Republican Congressional Committee ("NRCC") is a national political party committee, established in 1866 and currently organized under Section 527 of the Internal Revenue Code, devoted to increasing Republican membership in the U.S. House of Representatives. The NRCC supports the election of Republicans to the House through direct financial contributions to candidates and Republican Party organizations; coordinated party expenditures;[1] technical and research assistance to Republican

[1] The NRCC, like all political committees, conducts its coordinated expenditures using hard dollars. Although several amici curiae supporting the petitioner have submitted papers before this Court discussing the

candidates and Party organizations; voter registration, education and turnout programs; and other Party-building activities. The NRCC's primary sources of funding are transfers of excess campaign funds and other contributions from Members of Congress, and individuals from all walks of life making small donations of $100 or less.

The NRCC is governed by a chairman and an executive committee composed of thirty Republican members of the U.S. House of Representatives. The Chairman is elected by the House Republican Conference after each congressional election. The day-to-day operations of the NRCC are directed by a deputy chairman and conducted by a professional staff of over 50 people with expertise in campaign strategy development, planning and management, research, communications, fund raising, administration, and legal compliance.

Unlike the petitioner and its amici curiae, as a national political party committee, the NRCC is authorized to make coordinated party expenditures by the Federal Election Campaign Act, 2 U.S.C. §§ 431 *et seq.*, and has made such contributions in the past. *See Federal Election Commission v. Democratic Senatorial Campaign Committee*, 454 U.S. 27, 41 (1981). The NRCC has followed FECA's limitations when making coordinated expenditures since FECA's enactment. The NRCC's experience with making expenditures that are coordinated with congressional candidates in light of the FECA provision at issue places it in a unique position to comment on the practical effects of that provision. With the benefit of years of experience of laboring under the old regime prior to the Tenth Circuit's decision in this case, the NRCC

dangers of soft money, concerns over soft money are simply not implicated by any of the issues before the Court in this case.

can explain precisely how the expenditure limitation at issue restricts the NRCC's right to free speech. In addition, the experience of the NRCC poignantly demonstrates that the claim of the Petitioner and its amici – that a decision by this Court to uphold the decision below would result in a regime in which there was corruption or the appearance of corruption in the political process - is simply inaccurate.

SUMMARY OF ARGUMENT

In *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604 (1996), this Court struck down as violative of the First Amendment FECA's provision limiting the amount of independent expenditures that could be made by political party committees in political campaigns. Because the particular expenditure before the Court was an independent expenditure, the Court did not reach the broader issue of the constitutionality of FECA limitations on coordinated expenditures in that case. *See id.* at 623. The Court did observe that "coordinated expenditures do share some of the constitutionally relevant features of independent expenditures," although "[the] issue is complex." *Id.* at 624. Today, as the Court seeks to resolve the issue of whether coordinated expenditures may be limited consistent with the strictures of the Constitution, it must necessarily decide whether, for constitutional purposes, a coordinated expenditure more closely resembles a direct contribution to a candidate's campaign or an independent expenditure made on his behalf.

Coordinated expenditures are very similar to independent expenditures in every constitutionally important sense. Unlike direct contributions, title to the money being spent remains with the party committee, not with the campaign. The party committee, not the campaign, assumes any legal liability that may result from the expenditure. The

party committee, not the campaign, decides how and for what purpose the money will be spent. The FEC has recognized each of these points and, for twenty-five years, has expressly drawn a distinction between coordinated expenditures and direct contributions. Only now, in a *post hoc* attempt to justify the constitutionality of the provision before the Court today, the FEC attempts to equate the acts of a contribution and a coordinated expenditure. There is no reason to follow the FEC down this path.

But whether treated as a contribution or an expenditure, the provision at issue cannot survive constitutional scrutiny because it serves no important government interest. The primary purpose of the FECA is to prevent corruption and the appearance of corruption. The Petitioner justifies the coordinated expenditure limitation as serving this goal by preventing large donors from circumventing FECA's direct contribution limitations and "funneling" money to campaigns through political party committees by contributing to those party committees and then compelling those party committees to expend those funds as an coordinated expenditure on behalf of the candidate to whom they wish to contribute. However, the FECA's limitation on coordinated expenditures is absolutely useless at preventing this imaginary concern, for numerous reasons. First, FECA's limitation on contributions from private donors to political party committees, which will remain in effect regardless of the outcome of this case, prevents any donor from donating large enough sums of money to any party committee as to create the appearance of the danger that either the party committee, or the political candidate with whom the committee conducts an expenditure, will fall under the donor's influence. Second, the structure and organization of party committees is sufficiently large and bureaucratic in nature to prevent any donor or group of donors

from exerting undue influence over the committee. Third, the NRCC's experience in the 2000 election cycle shows that donations from outside individuals are largely unnecessary as a source of funding for coordinated expenditures, because the excess campaign funds of Members of Congress transferred to the NRCC alone could have funded all of the NRCC's coordinated expenditures for the entire election cycle many times over. And fourth, the NRCC's experience in the 2000 election cycle also shows that coordinated expenditures are rarely and sparingly used in races involving incumbent Members of the House and almost never made for the benefit of senior Members – the kind from whom a large donor would want to seek influence. Instead, such expenditures are almost uniformly made in a limited number of races each election cycle – usually those involving open seats, a kind of race in which there can be little appearance that the money is being used to curry favor from a powerful elected officials.

For these and other numerous reasons, FECA's limitations on coordinated expenditures serves little purpose other than to restrict the ability of party committees to get their message out before the general public with the approval of a campaign. While many view any rule which keeps money out of politics as a good rule, this Court has never embraced such a draconian approach. Absent any showing of a compelling need to keep coordinated expenditures limited in order to prevent the appearance of corruption – and none has been provided by the petitioner – this Court must affirm the right of the party committees to engage in their political speech in the manner, and to the extent, that they see fit.

ARGUMENT

I. Coordinated Expenditures Are, And Have Traditionally Been Deemed By the Petitioner, To Be

More Akin to Constitutionally Protected Expenditures Than To Contributions That May Be Limited Consistent with the First Amendment.

Petitioner and its amici have consistently failed to recognize the fundamental differences in fact and in law between a coordinated expenditure and a direct contribution. The petitioner would have this Court equate the two, arguing that jurisprudence upholding the constitutionality of limits on direct contributions compels this Court to uphold the expenditures limits at 2 U.S.C. § 441a(d)(3) of FECA. But this conflation fails to take into account the very real and important distinctions between the two types of activities.

The petitioner would gloss over the fact that this Court has expressly drawn a legal distinction between contributions and expenditures for purposes of constitutional analysis. Only last year, this Court established that restrictions on expenditures require a higher level of constitutional scrutiny than those on contributions. *See Nixon v. Shrink Mo. Gov't PAC*, 120 S.Ct. 897, 901-902 (2000). As this Court explained, limitations on expenditures closely implicate the right to Free Speech, whereas limits on contributions implicate "more heavily on the associational right than on freedom to speak." *Id.* at 904. The Tenth Circuit below properly recognized that the constitutional distinction between expenditures and contributions was a longstanding one when it observed that this Court had, in the case of *Buckley v. Valeo*, 424 U.S. 1 (1976), "recognized [a] distinction between (permissible) restrictions on contributions and (impermissible) restrictions on expenditures[,] impl[ying] that different types of FECA limits require different levels of justification." *FEC v. Colorado Republican Campaign Committee*, 213 F.3d 1221, 1226 (10th Cir. 2000).

In deciding whether the Court below correctly held that FECA's limitation on coordinated expenditures was unconstitutional, this Court should contrast the nature of conducting a coordinated expenditure with the making a direct contribution. Because the act of contributing may not be equated with the act of conducting a coordinated expenditure, this Court should apply the same level of scrutiny to limitations on coordinated expenditures that it has applied to other expenditure provisions. *See Colorado v. Republican Federal Campaign Committee*, 518 U.S. 616, 620 (1996) ("*Colorado I*") (striking down FECA's restrictions on independent expenditures).

Important differences between the two activities caution against this Court accepting the FEC's self-serving claim that coordinated expenditures are the same for constitutional purposes as cash contributions. Coordinated expenditures are simply not the legal, factual, or functional equivalent of contributions. As a starting point, the fact that the coordinated activity of a campaign and a party committee has been labeled by the FECA and the FEC as a coordinated "expenditure," rather than coordinated "contribution," is revealing. The selection of this nomenclature is no mere accident; in every meaningful sense, a coordinated expenditure is more similar to an independent expenditure than a contribution.[2] The proof of this point is contained both in the fundamental nature of the two activities as well as in the FEC's own regulations and materials.

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[2] Indeed, coordinated expenditures need not even be "coordinated" in the perjorative sense. "Although consultation or coordination with the candidate is permissible, it is not required." 15 Op. Fed. Elect. Comm. 3 (1984).

Like private citizens, political party committees have the right to make direct contributions to the campaigns of political candidates. When a party committee does so, with the exception of certain "in-kind" contributions, the organization makes out a check to that particular candidate for the amount of money the party committee wishes to contribute. Then the check is delivered and presumably cashed by the campaign. At that point, *title and ownership to the money has transferred* from the party committee to the candidate. The money now belongs in every real sense to the campaign, not the party committee. This simple fact carries with it an important implication – the campaign can spend the money however the campaign sees fit. The party committee makes no attempt to track the way in which the campaign spends the contribution, nor does it mandate that the money be used for certain purposes or otherwise attempt to place strings upon the contribution. Consequently, the campaign can spend the money on advertisements, staff salaries, direct mailings or anything else the campaign chooses. Given the wide latitude the FEC has generally accorded to campaigns over the way in which they spend their own money,[3] the campaign could, if it so chose, elect to spend the party committee's contribution in a way that the party committee might view as wasteful, such as by spending it on frivolous items like balloons or embroidered napkins. Simply put, the party committee's involvement with the money ceases from the moment the check is delivered.

In the situation of a coordinated expenditure, on the other hand, title, ownership, and even possession of the money is never transferred to the campaign. *The party committee expends its own money directly to vendors*. The money never

[3] *See, e.g.*, 1 Op. Fed. Elect. Comm. 2 (1977) ("The Act does not limit the discretion of campaign committees to make their own determination as to the types of expenditures which should be made.").

at any point enters the campaign's accounts. This distinction between coordinated expenditures and cash contributions has long been recognized by the FEC. In 1975, in an Advisory Opinion regarding contributions, the FEC stated:

> In reaching this conclusion [that a political committee's check constituted a contribution] the Commission is mindful that . . . a state party and its lawfully designated subcommittee may expend up to $10,000 on the general election campaign of a Congressional candidate. *However, a direct donation of money to a candidate – as in the present instance – is not the same as an expenditure "in connection with the general election campaign" of a candidate.* In one case, the candidate acquires exclusive use of the monies in question; in the other, the state party, although it may consult with the candidate as to how to expend the funds, has control over how the monies are used.

120 Op. Fed. Elect. Comm. 3 (1975) (empahsis added). From that time until the present case, the FEC has never reconsidered its decision that a party committee's retention of control over coordinated expenditures means that such expenditures are not legally the same as contributions. Now, abandoning twenty-five years of its own agency jurisprudence, the FEC seeks to conflate expenditures and contributions for purposes of defending FECA's last remaining involuntary limitation on expenditures contained in the statute.[4]

[4] Limitations on expenditures for candidates who accept public financing of their campaigns have not been struck down by courts in the same manner as every other limitation on expenditures has been struck down

But the longstanding and crucial distinction between coordinated expenditures and campaign contributions has not only been drawn expressly by the FEC in advisory opinions, but is implicitly made throughout the entire structure of federal campaign law. The FECA itself addresses limitations on party contributions and limitations on party coordinated expenditures in separate provisions. Limitations on the total dollar amount of contributions that may be made by a party to a candidate are contained in 2 U.S.C. § 441a(a)(2)(A), which prohibits a political committee from making contributions to any particular candidate's campaign "with respect to any election for Federal office which, in the aggregate, exceed $5,000." Coordinated expenditures are addressed by a separate provision appearing several subsections later, at 2 U.S.C. § 441a(d)(3), which limits such expenditures to $10,000, $20,000, or two cents multiplied by the voting age population of the State, depending on the particular office being sought by the candidate. This view of coordinated expenditures and direct contributions as distinct activities is carried through in the text of the penalty provision of the statute which describes the acts of "accepting any contribution" and "making any expenditure" as separate violations of the act. *See* 2 U.S.C. § 441a(f). If Congress had desired to treat contributions by political parties the same as coordinated expenditures, it could easily have done so. The existence of the separate provisions addressing these issues demonstrates that the two activities were considered distinct from each other by Congress. The choice of Congress to keep these two activities separate deserves deference, since the "choice of means" for regulating elections "presents a question primarily addressed to the

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outside the area of public financing. By accepting government financing of their speech, candidates who accept public monies voluntarily choose to have their right to engage in free speech limited. *See Buckley*, 424 U.S. (passim).

judgment of Congress." *Bourroughs v. United States*, 290 U.S. 534, 547 (1934).

Petitioner's attempt to equate coordinated spending with direct contributions is also at odds with petitioner's own regulations and publications. The FEC's regulations have imposed very strict reporting requirements on campaigns for all contributions. For example, 2 U.S.C. § 434(b)(2)(C) requires candidate committees to report contributions from party committees, and 2 U.S.C. § 434(b)(3)(B) requires that report to include the amount, date of receipt, and the contributing committee's name and address. When the money received is spent by the campaign, this too must be reported. *See* 2 U.S.C. § 434(b)(4)(A). Political committees must also report making the contribution to the campaign. *See* 2 U.S.C. § 434(b)(2)(D). *Coordinated expenditures, on the other hand, are not reported by the campaign at all* – neither as an expenditure nor as a receipt. The coordinated expenditure is reported only by the political party committee, and in fact is reported as an expenditure, not a contribution to the campaign. *See* 2 U.S.C. § 434(b)(4)(H). If the FEC truly believed in the position that it has taken before this Court – that coordinated expenditures should be viewed and treated as contributions – it would long ago have required the campaigns to report coordinated expenditures as a contributions. Instead, the FEC's regulations reflect what the FEC has always, prior to this appeal, told the public: "Coordinated party expenditures differ from contributions in [many] ways." Federal Election Commission, Campaign Guide for Political Committees, August 1996, at 16.

These and other incongruities belie the FEC's post hoc attempt to justify as constitutionally permissible its limitation on expenditures. In fact, these expenditure limitations are

analytically similar to the limitations on expenditures that were struck down by this Court in *Buckley*. Like limitations on independent expenditures, limitations on coordinated expenditures "preclude[] most associations from effectively amplifying the voice of their adherents." *Buckley*, 414 U.S. at 20-21; *see also Federal Election Commission v. National Conservative Political Action Committee*, 470 U.S. 480 (1985) ("[A]llowing the presentation of views while forbidding the expenditure of more than $1,000 to present them is much like allowing a speaker in a public hall to express his views while denying him the use of an amplifying system"). While restrictions on the voice of the people may be justified where necessary to avoid the appearance of corruption, *see Shrink Missouri*, 120 S.Ct. at 905, in this case, contrary to the petitioner's suggestion, there is no genuine concern that the striking down of expenditure limits will result in any impropriety or appearance of impropriety. An understanding of the NRCC's coordinated expenditures during the 2000 election cycle will serve to highlight this point.

II. The NRCC'S Experience In The 2000 Election Cycle Contradicts Petitioner's Claims That Allowing Unlimited Coordinated Expenditures Will Result In The Circumvention Of Other Provisions Of The Election Code Or Create The Appearance Of Impropriety.

Petitioner's sole justification for equating contributions and coordinated expenditures for purposes of constitutional analysis is petitioner's assertion that absent a limitation on coordinated expenditures, large donors will use political committees to "launder" large contributions to the candidates. Petitioner and its amici curiae (none of whom have ever actually made coordinated expenditures) seek to create a fear

that FECA's direct limits on contributions to political campaigns will be circumvented by large donors, who will contribute money to political committees with the understanding that these committees will pass the money directly on to the campaign in the form of coordinated expenditures that are in fact controlled by the campaign.[5] This concern is simply contrary to the reality of the way coordinated expenditures are actually conducted.

These concerns are misplaced for numerous reasons. First, FECA's limits on contributions to political party committees render its coordination expenditure limits superfluous as a means to prevent campaigns and political committees from falling under the influence of large donors. Section 441a(a) of FECA limits the size of annual contributions that can be given by an individual donor to $20,000 for national party committees and $5,000 to other political action committees, $1,000 per election to individual campaign committees, with an overall umbrella limitation of $25,000 (a limit that has not changed since 1975). *See* 2 U.S.C. §441a(a)(1)(B) & (C). Regardless of what limitation there is on coordinated expenditures (and we think there should be none), it will not disturb these congressionally-mandated limits on the contributions the NRCC can receive to fund its these expenditures. As this Court correctly observed in *Colorado I*, the existence of these contribution limitations means that the opportunity for corruption "is, at best attenuated." *Colorado I*, 518 U.S. at 616. Absent any limit on coordinated expenditures, the contribution limitations will prevent donors from donating a large enough sum to any one political committee as to create the appearance that the donor

[5] A political committee could not simply donate the money to the campaign directly because of the $5000 limit on party committee contributions contained in 2 U.S.C. § 441a(a)(2)(A).

might acquire an undue influence over the committee's activities.

Second, as a simple practical matter, political committees have become too large and bureaucratic to readily lend themselves to "capture" by private parties.[6] The NRCC has over thirty Members serving on its board. It maintains a sizable and growing full-time staff. The staff of the NRCC, like most party committees, is divided into different divisions. The finance division oversees matters relating to the receipt of contributions. The political division makes decisions relating to election campaigns such as whether and how much money to spend on coordinated expenditures. In simple terms, this means that the party committee personnel who receive money are not the same personnel who make decisions regarding how that money is to be spent. While petitioner and its amici curiae would have this Court uphold the expenditure limitation out of fears that cabals will form between employees in these divisions that might allow some sort of linkage between contributions and expenditures, the reality is that the number of employees involved in these decisions and the segregation of these responsibilities makes the existence of this kind of conspiracy, or the appearance of such a conspiracy, highly farfetched.

Third, political committees exert a degree of control over coordinated expenditures that is inconsistent with the petitioner's claim that corruption will erupt if the expenditure limits are removed. When the NRCC engages in coordinated

[6] As we have discussed, where the party committee elects to contribute $5000 directly to a campaign, that money becomes the property of the campaign and is spent in any way the campaign sees fit, without any say from the party committee. Just as a party committee loses control over the money when it contributes it to a campaign, so too does a donor lose control over money once it has been donated to a party committee.

expenditures, it does not take actions that are tantamount to handing the campaign a blank check, as petitioner implies. Rather, control over coordinated expenditures remains in the hands of the NRCC. Particular coordinated expenditures are ultimately selected by the NRCC, not the campaign. If the NRCC decides to pay for advertising for the benefit of a particular candidate, for example, then it is the NRCC, not the campaign, that has final approval and review of that advertisement for content. The NRCC, not the campaign, assumes legal liability for the content of the advertisement. The political committee's retention of control over coordinated expenditures is reflected in FECA itself. When a Committee runs an advertisement as part of a coordinated expenditure, the statute requires the publication of a disclaimer which states: "Paid for by the NRCC and authorized by candidate Smith." *See* 2 U.S.C. § 441d(2). This required disclaimer exemplifies the relative balance of power between the political candidates and party committees when it comes to the coordinated expenditure of the party committee's money. Of course, the candidate retains some say regarding the content of the advertisement; the party committee would not run an advertisement directly contrary to the message of the candidate's campaign, for example. But in every meaningful sense, the advertisement contains a message from the NRCC, not the campaign.

As a result, the NRCC views advertisements resulting from coordinated expenditures as its own speech. The process by which the NRCC engages in that speech is virtually identical to the process by which it engages in protected free speech by making an independent expenditure, with the sole exception that the coordinated expenditure is done with the authorization of a particular candidate's campaign. The fact that a coordinated expenditure reflects a party committee's

own speech renders the expenditure analytically similar to an independent expenditure, and not at all similar to a direct contribution, whose only communicative aspects comes from the act of giving. Despite their similarity, however, the existence of independent expenditures as an alternative to coordinated expenditures as a method for engaging in speech unfortunately does not serve to limit the degree of infringement on the NRCC's speech posed by the coordinated expenditure limit. The FEC's stringent rules regarding the characteristics necessary for an expenditure to qualify as independent are so murky, and precedent on the subject so unclear, that political committees have been unable to ascertain exactly how "independent" an expenditure needs to be to qualify as an independent rather than a coordinated expenditure. As a result, fear of investigation by the FEC and possible liability has chilled this form of speech so much that it is rarely if ever used by political committees. In fact, the NRCC did not make a single independent expenditure in conjunction with the November 2000 general election.[7] If the decision of the court below is reversed, the real possibility exists that the NRCC's political speech will be silenced almost in its entirety.

A study of the sources of the funds used for coordinated expenditures and the races in which coordinated expenditures are made further dispels any notion that coordinated expenditures could be utilized by large donors to circumvent direct contribution limits or improperly "buy influence" with powerful Congressmen. As a starting point, the NRCC's reports show that it spent just over 3.5 million

[7] In fact, the NRCC has only made one independent expenditure, and that was done under unique circumstances presented by a special election held last year. Without any basis, the FEC questioned the independence of that expenditure, requesting additional information on the matter.

dollars on coordinated expenditures during the 2000 election cycle. During the same cycle, Members of Congress transferred over 11 million dollars of their own excess campaign funds to the NRCC. *See* 2 U.S.C. § 439a (allowing Members of Congress to transfer excess campaign funds to party committees. Consequently, the NRCC could have funded all of its coordinated expenditures many times over simply by using the money left over from various Congressional campaigns; *private contributions from any source were not essential* to the making of any of the NRCC's coordinated party expenditures. The large donors imagined by the petitioner and its amici simply have not attempted to circumvent the contribution limitations or otherwise exert on undue influence over the political process in the manner they suggested.

Nor would large donors have been successful even if they had attempted to make large contributions in the 2000 election cycle with the purpose that the contributions be spent on coordinated expenditures that would "purchase" influence in the House of Representatives. Following the petitioner's logic, in order to "buy influence" in Congress, a major contributor would want for his or her contribution to be used to pay for a coordinated expenditure for the campaign of a powerful Congressman, such as the head of a major House Committee. Yet no such senior members of the House or other similarly situated Congressman benefited from any coordinated expenditures from the NRCC during the 2000 election cycle.

Furthermore, if major donors seeking to evade FECA's direct contribution limitation to political campaigns were to exist (notwithstanding the presence of FECA's limitations on contributions to political party committees), those donors

would want, at a minimum, for his or her expenditure to benefit a sitting incumbent. A candidate who has yet to win office would be a bad investment – very likely to lose (and therefore have nothing to offer the donor but a hearty handshake), or if the new challenger were fortunate enough to prevail, as a freshman Congressman he or she would have very little influence that could benefit the wealthy donor. Again, the facts show that just the opposite occurred in the 2000 election cycle. The vast majority of NRCC's coordinated expenditures were done not for the benefit incumbents, but in open seats or in seats where the NRCC deemed the democratic incumbent to be politically vulnerable. In fact, of the 435 House elections in the 2000 election cycle (59 of which were uncontested), the NRCC made coordinated expenditures in only 57, and of those only 22 were races involving Republican incumbents. In the elections in which a Republican incumbent benefited from a coordinated expenditure by the NRCC, that incumbent was in serious danger of losing the election. If individual donors had been depending on the NRCC to make coordinated expenditures on their behalf in order to curry favor with powerful politicians, then they would have been sorely disappointed.

That large coordinated expenditures are rarely if ever made to benefit incumbent politicians should come as no surprise to any student of politics. The NRCC, as a body, exists to increase the Republican membership of Congress. As a means of furthering this end, coordinated expenditures made on behalf of incumbent Representatives are largely useless. Incumbent Representatives are usually re-elected without the need for assistance in the form of coordinated expenditures, and any hard money that is available for such expenditures is better spent seeking to increase the number of Republican seats by targeting open seats or seats with politically vulnerable

Democrats. In the rare case in which an incumbent benefits from a coordinated expenditure, it is because his or her seat has become politically vulnerable to a Democratic challenger (heavily supported by his or her party) due to changes in the makeup of his or her constituency, the perception of poor job performance, or other such factors. By the time the candidate benefits from the expenditure, it is already extremely likely that the seat will be lost.

For these reasons, if the NRCC were permitted to expend an unlimited amount of money on coordinated expenditures, the NRCC still would not suddenly begin to spend money in races involving powerful incumbent Congressmen. Instead, if given the opportunity, the NRCC would spend additional money in the races that in which it would already make coordinated expenditures – races involving open seats or politically vulnerable Democratic incumbents.[8] Additional spending in these types of races simply does not create any sort of appearance of corruption. If anything, it creates the opposite impression – that the NRCC is using its right to free speech to introduce the public to the relatively unknown challengers that the Republican Party supports, and perhaps possibly that the NRCC is seeking urge the American people to remove those of its opponent's politicians who have been corrupted by their tenure in Washington.

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[8] Despite having the Tenth Circuit's decision as controlling legal authority on its side, the NRCC did not exceed the coordinated expenditure limit in the 2000 election cycle, because the petitioner threatened to retroactively pursue any party committee that exceeded the limit, even in the Tenth Circuit, in the event this Court reversed the court below after the election was over. *See* Mike Allen, *GOP May Defy Curb on House Campaigns; Spending Would Test Court Ruling*, **Washington Post**, July 10, 2000, at A1.

Consequently, neither logic nor facts bear out the petitioner's suggestion that, absent reversal of the court below, large donors will take advantage of the existence of the ability of political parties to make unlimited coordinated expenditures in order to make an end run around FECA's contribution limitation and thus exert a "corrupting influence" over Congress. So understood, the petitioner can simply afford this Court no reason to ignore the NRCC's important First Amendment right to expend its money as it sees fit, and in any amount it sees fit. Petitioner has simply failed to provide any important government interest that would support such a restriction in this case.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals for the Tenth Circuit should be affirmed.

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